

Summary of Public Forum - May 6, 2010

Overview:

Close to 20 residents attended the May 6, 2010 Public Forum. A wide range of community members were in attendance which included landowners/residents, Chamber of Commerce representatives, Town Council members, and various other members of Town Boards and Committees. Discussions at this meeting centered on the first draft of the ordinance amendments proposed for Fall Town Meeting. These ordinance amendments include the following study areas: 1) the remaining portions of the Village Residential District, 2) the Village Historic District, 3) the Bar Harbor Gateway/Shoreland General III Districts, 4) Mount Desert Street, and 5) the Head of the Island. June Town Meeting ordinance amendments were also discussed, but largely focused on the proposed Shoreland General III District and preserving "The Cat" Ferry service.

Fall 2010 Ordinance Amendments:

Shoreland General III & Bar Harbor Gateway

At a staff level the Planning Department determined that it would be productive to discuss the Shoreland General III District in relation to the Bar Harbor Gateway District. This is because the two proposed districts abut one another. Furthermore, pursuant to the March 17, 2010 Planning Board meeting it seemed that several residents were confused about the purpose of the Shoreland General III District. It also became apparent that residents had relevant questions regarding the proposed allowance for intensive land uses in the Shoreland General III District (such as Transient Accommodations, piers, dock and wharfs, marinas, wind turbines, and transportation facilities).

The answer to this question is simple: the majority of the uses that are permitted in the Shoreland General III District currently exist on the ground. As a result, many of these uses are presently non-conforming which limits landowner's ability to make use of their property. Moreover, the abutting upland district to the Shoreland General III zone is currently the Bar Harbor Corridor District. The Bar Harbor Corridor district permits all of the intensive land uses that are proposed to be added in the Shoreland General III district. As a result, there is currently a vast disconnect between the uses that are allowed in the upland Bar Harbor Corridor District and the Shoreland Limited Residential District.

In developing the Shoreland General III District language, staff had intended to allow many of the nonconforming land uses that currently exist in the Shoreland Limited Residential District (such as the Ferry Terminal), to become conforming. In this regard the uses allowed in the Shoreland General Development III district would match those in the Bar Harbor Corridor District. If the Shoreland General III District does not pass at the June 2010 Town Meeting, staff plans to return with a revised draft for the November Town Meeting. This revised draft will incorporate the comments/direction received at the May 6, 2010 Public Forum which included:

1. Exploring the possibility of adding controversial land uses (such as: Ferry Terminal, large scale Transient Accommodations, wind turbines, pier, dock, wharf, and restaurants), as Conditionally Permitted Uses in this district.
2. Investigating the possibility of making government uses allowed in the Shoreland Residential District which would reverse the need for a map amendment all together.
3. Revising the definition of accessory uses to make them more explicit and clear.

4. Conducting a build out analysis of this district so that the general public can understand what this area could look like if it were fully constructed with the highest and best uses that would become permitted with the adoption of Shoreland General III.

Bar Harbor Gateway:

As discussed above, the Bar Harbor Gateway Zone abuts the proposed Shoreland General III zone. This area includes many large scale hotels and other intensive land uses. Several members of the public commented on the draft language staff presented for this district. These comments centered on the following points:

1. Parking Requirements – the language currently requires that all parking be located at the side or rear of a property. It was suggested that such a requirement would make it appear that hotels, restaurants, and other commercial type uses in this area were less busy than they actually are. Often consumers judge the quality of a business based on the number of cars visible from the road. Furthermore, implementation of this requirement would cause hotels to place new buildings on Route 3, which could increase noise in hotel rooms. Pursuant to these comments it was suggested that the standards for buffering and screening for parking lots enforced and strengthened, but that businesses in this district continue to be allowed to situate parking lots at the front of the property.
2. Accessory Uses – the language currently states that all accessory uses would be required to seek a permit from the Code Enforcement Officer, but the not the Planning Board. The question was raised if some accessory uses (particularly to hotels), such as a conference center or restaurant, should be required to go to site plan instead of just receiving a permit from the Code Enforcement Officer.
3. Side Setbacks - many of the existing structures do not conform to current side setback requirements. The question was raised as to whether this standard could be further relaxed given that this is a commercial growth area.
4. Lot Coverage – increasing lot coverage from 25% to 50% would be beneficial, but increasing to 75% would be ideal for most business owners in this district. Landowners in this district pointed out that the Hulls Cove Business District allows more lenient standards than those currently in the Bar Harbor Corridor District. The question was raised if any compelling reason could be found not to increase lot coverage to 75% in this district.

Village Historic District:

As stated in the Goals of the Comprehensive Plan, Staff is attempting to condense the numerous land use districts that exist in Bar Harbor. The current Village Historic District amendment proposed would combine areas that are currently zoned as Bar Harbor Historic Corridor on Route 3, and Hulls Cove Historic District in the Village Historic District. Staff conducted an online survey of residents in the Hulls Cove Historic District to gain feedback on some of the aspects they enjoy and/or would like to see change in this area. The language included in the current draft of the Village Historic District reflects these comments.

Head of the Island:

This area of Bar Harbor/Town Hill is being analyzed for possible land use and lot standard amendments for Fall Town Meeting. It was suggested that making this a predominantly residential zone might not be sensible due to the heavy traffic volumes experienced during the summer months. It was also suggested that Staff consult with the local landowners directly to determine their goals for long term development. It was also suggested that Staff wait one summer to make any changes in this area to determine the impact the traffic reconfiguration may have on traffic flows on and off the island.

Conditional/Special Use Permits:

The Planning Department is currently working to implement a Conditional/Special Use permitting mechanism which would allow the Planning Board greater discretion over approving certain uses. A Conditional Use is generally defined as: "a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts." Conditionally permitted uses allow the Planning Board a great deal of discretion in determining if the use proposed would fit with the surrounding land use pattern. A Conditional Use Permit (CUP) requires that the applicant for such a use show the contemplated use is compatible with the policies in terms of zoning ordinances, and that such use would be essential or desirable to the public convenience or welfare, and will not impair the integrity and character of the zoned district or be detrimental to the public health, safety, morals, or welfare.

It is important to note that Conditionally Permitted Uses run with the land and not the applicant. In other words, all related property and personal rights are freely transferable, unless expressly prohibited by law. Furthermore, Conditions attached to a CUP must be explicitly attached by the Planning Board and cannot be implied. The Planning Board will be required to make written "findings of fact" in order to support a decision to approve or deny a CUP. Written findings, as with all municipal boards, are important as they allow the "analytical gap between raw evidence and ultimate decision to be reviewed later. If a decision is challenged, a court will examine the evidence supporting the findings by the Planning Board to determine whether the Board abused its discretion when acting on a CUP application. Such an abuse of discretion can be found when: 1) the Board did not proceed in a manner prescribed by law; 2) the Board's decision is not supported by findings; and 3) the Board's findings are not supported by the evidence in the administrative record.

The goal of this policy is to allow certain kinds of development, that are perhaps more intense than would traditionally be allowed purely by site plan, to be reviewed on a case by case basis. In the interest of economic development, and the Town's goal to become a more sustainable year round community, this mechanism allows the Planning Board to assess Conditionally Permitted Uses based upon the surrounding land use pattern. In this respect, the Board will be able to determine if certain uses may be acceptable in one area of this land use district, give the surrounding land uses, or inappropriate in another part of that same district given the surrounding land use districts.

Other Discussion:

Additional questions from attendees focused on the Town Hill Mini Plan and the proposed land use ordinance amendments that accompany the adoption of this plan for the June Town Meeting. Staff reiterated that a supermajority vote is required in order to pass this language. If this language does not pass, and the Mini Plan is not adopted, Staff will need to return to study this area in the future.

Conclusion:

Staff will be working with the Planning Board and Town Council in the upcoming weeks to address any changes that need to be made to this language before it becomes finalized. The Planning Board will discuss this language at their May 19 and June 2 meetings where public comments will be received. The Town Council will address revised draft language of their May 18, 2010 meeting.